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21839	7590	10/21/2003	EXAMINER	
BURNS DOANE SWECKER & MATHIS L L P			KIDWELL, MICHELE M	
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			3761	36

DATE MAILED: 10/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/194,700

Applicant(s)

WIDLUND, URBAN

Examiner

Michele Kidwell

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10, 13-17, 19, 20 and 22-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 13-17, 19, 20 and 22-30 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed July 14, 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the applicant has added claims 27 – 30 which recite that the wetting region contacts the mucous membranes only of the user. This limitation is not supported by the originally filed disclosure.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 27 – 30 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for having a wetting region which contacts the mucous membranes of a user, does not reasonably provide enablement for a wetting region which contact the mucous membranes only of the user (emphasis added). The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 16 – 17, 19 – 20 and 22 – 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller (US 3,799,167).

With respect to claim 1, Miller et al. (hereinafter “Miller”) discloses an absorbent article comprising a liquid-pervious surface layer (16), a liquid-impervious surface layer (18) and an absorbent body enclosed between the two surface layers (14) wherein the article further exhibits a wetting region adapted to be disposed adjacent the mucous membranes of the user, which is the region of the liquid pervious surface layer which is intended to first be wetted by body fluid emitted to the article, wherein the liquid-pervious surface layer within the wetting region is constituted of hydrophilic absorbent material that is adapted to retain moisture, at least at the surface of the liquid pervious surface layer which is intended to be facing the user during use so as to maintain the mucous membranes of the user moist, and that all remaining parts of the liquid-pervious surface layer are constituted of a hydrophobic material, and wherein an extent of the wetting region is smaller than an extent of the absorbent body as set forth in col. 1, lines 40 – 48 and in figure 2.

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As to claim 3, Miller discloses an absorbent article wherein the hydrophilic material in the liquid-pervious surface layer primarily consists of hydrophilic absorbent fibers as set forth in col. 1, lines 40 – 48.

With respect to claim 16, Miller discloses a method for maintaining a mucous member of a user moist with an absorbent article, the absorbent article including an absorbent body (14), a liquid impervious layer (18), and a liquid pervious layer (16), the liquid pervious layer constituting both a hydrophobic material and a hydrophilic absorbent material, where the hydrophilic absorbent material forms a wetting region of the liquid pervious layer that is a region that is intended to be first wetted by body fluid and all remaining parts of the liquid pervious layer are hydrophobic, the absorbent body being enclosed between the liquid pervious layer and the liquid impervious layer, the method comprising: wearing the absorbent article such that the wetting region is adjacent the mucous membrane of the user and the wetting region receives body fluids emitted from the user; retaining at least a portion of the body fluids in the hydrophilic absorbent material; and maintaining the mucous membrane of the user moist with the body fluids retained in the hydrophilic absorbent material of the wetting region, wherein an extent of the wetting region is smaller than an extend of the absorbent body as set forth in the rejection of claim 1.

As to claim 17, Miller discloses an absorbent article wherein the wetting region covers at least a portion of the absorbent body as set forth in figure 2.

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With reference to claim 19, Miller discloses an absorbent article comprising a liquid pervious surface layer (16), a liquid impervious surface layer (18), an absorbent body enclosed between the two surface layer (14), wherein the article further exhibits a wetting region adapted to be disposed adjacent the mucous membranes of the user, which is the region of the liquid pervious surface layer which is intended to first be wetted by body fluid emitted to the article, (figure 1), wherein the liquid pervious surface layer within the wetting region is constituted of hydrophilic absorbent material that is adapted to retain moisture, at least at the surface of the liquid pervious surface layer which is intended to be facing the user during use so as to maintain the mucous membranes of the user moist, and that all remaining parts of the liquid pervious surface layer are constituted of a hydrophobic material, and wherein at least a portion of the remaining parts of the liquid pervious surface layer extend over the absorbent body as set forth in the rejection of claim 1 and in figure 2.

With reference to claim 20, Miller discloses a wetting region that covers at least a portion of the absorbent body as set forth in figure 2.

With respect to claim 22, Miller discloses a method for maintaining a mucous member of a user moist with an absorbent article, the absorbent article including an absorbent body (14), a liquid impervious layer (18), and a liquid pervious layer (16), the liquid pervious layer constituting both a hydrophobic material and a hydrophilic absorbent material, where the hydrophilic absorbent material forms a wetting region of the liquid pervious layer that is a region that is intended to be first wetted by body fluid and all remaining parts of the liquid pervious layer are hydrophobic, the absorbent body

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being enclosed between the liquid pervious layer and the liquid impervious layer, the method comprising: wearing the absorbent article such that the wetting region is adjacent the mucous membrane of the user and the wetting region receives body fluids emitted from the user; retaining at least a portion of the body fluids in the hydrophilic absorbent material; maintaining the mucous membrane of the user moist with the body fluids retained in the hydrophilic absorbent material of the wetting region, wherein at least a portion of the remaining parts of the liquid pervious surface layer extend over the absorbent body as set forth in the rejection of claim 1 and in figure 2.

Regarding claims 23 – 26, see col. 1, line 40.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 – 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (US 3,799,167).

With reference to claims 4 – 6, the examiner contends that the use of any hydrophilic, absorbent material would yield the same results as the claimed hydrophilic, absorbent material because the applicant has not established that one hydrophilic material would function any better than another hydrophilic material. Additionally, it

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would have been an obvious substitution to one ordinary skill in the art to substitute one hydrophilic material for another based on the desired end product.

Claims 2, 7 – 8 and 13 – 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller as applied to claims 1, 3, 5 10, 16 – 17, 19 – 20 and 22 above, and further in view of Bien et al. (US 5,885,268).

The difference between Miller and claim 2 is the provision that the article exhibits a hump projecting from the liquid-pervious surface layer wherein the hump on the article at least partially coincides with the wetting region.

Bien et al. (hereinafter "Bien") teaches an article exhibiting a hump projecting from the liquid pervious surface layer as set forth in figure 5.

It would have been obvious to one of ordinary skill in the art to modify the absorbent article of Miller to employ a hump in the wetting region because the hump would provide improved contact of the absorbent article with the wearer as taught by Bien in col. 3, lines 36 – 44.

Regarding claim 7, Bien teaches an article wherein the liquid pervious surface layer comprises a laminate of a first liquid-pervious layer, hydrophobic material layer arranged closest to the absorbent body (col. 9, lines 50 – 55) and a second, liquid-pervious, hydrophilic material layer of substantially a same extension as the wetting region of the article, arranged outside the first material layer and intended to bear on the body of the user in the wetting region during use as set forth in col. 8, line 50 to col. 9, line 36 and figure 5.



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With reference to claim 8, Bien teaches an article wherein the material is structured as claimed by the applicant and further exhibits an opening, of substantially the same extension as the wetting region of the article, through which the hydrophilic layer is exposed as set forth in col. 8, line 50 to col. 9, line 55. Bien teaches that the hydrophobic material layer may be an apertured plastic film. In this instance, the underlying hydrophilic layer would be exposed.

As to claim 13, Bien teaches an article comprising a shaping member which, by means of influence from forces which the article is subjected to during use, has an ability to bring the wetting region into contact with the mucous membranes of the user as set forth in col. 3, lines 45 – 54 and col. 12, line 50 to col. 13, line 6.

With reference to claim 14, the examiner contends that the use of any hydrophilic, absorbent material would yield the same results as the claimed hydrophilic, absorbent material because the applicant has not established that one hydrophilic material would function any better than another hydrophilic material. Additionally, it would have been an obvious substitution to one ordinary skill in the art to substitute one hydrophilic material for another based on the desired end product.

With respect to claim 15, Bien teaches the shaping member as an insert as set forth in col. 15, lines 11 to col. 16, line 8 and figure 5.

### ***Response to Arguments***

Applicant's arguments filed July 14, 2003 have been fully considered but they are not persuasive.

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Initially, the examiner notes that during the interview conducted June 17, 2003, the examiner indicated that the currently pending claims removed the Miller reference as prior art, however, a subsequent review of the claim language and the Miller reference has caused the examiner to revisit and maintain the previous rejection.

In response to the applicant's argument that Miller does not ever use "hydrophilic" to describe any portion of the diaper, the examiner refers to col. 1, lines 40 – 48 in which Miller discloses that the fabric of the covering sheet is formed with blended acrylic (hydrophobic) and rayon (hydrophilic) fiber. This passage discloses that the entire coversheet is constituted of both a hydrophilic and hydrophilic fiber as required by independent claim 1. The liquid pervious surface layer is constituted of a hydrophilic absorbent material (rayon) and all remaining parts that are not considered to be the wetting region are constituted of a hydrophobic material (acrylic).

### ***Allowable Subject Matter***

Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

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See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

  
Michele Kidwell  
October 16, 2003

  
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